

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR BER BRIEFING ON REGISTRATION OF NON-METALLIC
MINERAL PROCESSING FACILITIES**

Agenda # III.A.2.

Agenda Item Summary: At the June 4, 2004 meeting of the Board of Environmental Review the board initiated rulemaking proposing to establish a registration process in lieu of obtaining an air quality permit for non-metallic mineral processing facilities. During the public comment period, the Board received adverse comments from EPA on the proposed rulemaking. The department is requesting at this time that the Board decline to take final action on this matter, due to difficulties satisfying EPA's concerns with this rule.

List of Affected Rules: ARM 17.8.504, 17.8.505, 17.8.744 and Proposed New Rules I through X.

Affected Parties Summary: This rulemaking would affect the non-metallic mineral processing industry, which consists primarily of portable rock, sand and gravel crushers.

Scope of Proposed Proceeding: The Board is considering.

Background: At its meeting on June 4, 2004, the Board voted to initiate rulemaking on the matter of creating a registration process for non-metallic mineral processing facilities in lieu of obtaining a Montana Air Quality Permit. Currently, the administrative rules adopted under the Clean Air Act of Montana require some sources of air pollution to obtain a permit prior to construction or operation. House Bill 700, passed by the 2003 Montana Legislature and codified as 75-2-234, MCA, allows the Board to adopt a registration system in lieu of permitting.

The proposed new rules would allow some facilities, which now require an air quality permit to operate, to register with the Department in lieu of submitting a permit application and obtaining a permit. Registered facilities would still be required to supply information that is consistent with the type and amount of information currently required in a permit application. Registered facilities would still be required to follow rules of operation that are similar to current permit conditions. These rules of operation would include emission limitations and requirements for testing, monitoring and reporting.

The proposed new rules would apply to non-metallic mineral processing operations. The development of a registration process for homogenous facilities where permit conditions and environmental impact vary little from permit to permit would allow the Department to use air program staff more efficiently, focusing on major source permitting issues and field compliance activities.

The department had numerous discussions with EPA on the concerns addressed in their comments. It was determined that it would be extremely difficult to conduct the analysis EPA requested. The parameters used during the analysis would then become operational limitations of the proposed rules making the rules very

cumbersome to use and would not meet the intended goal of the department.

Hearing Information: A Public Hearing was held on July 14, 2004. There were no comments received at the hearing, however the Board received written comments. The Montana Contractors Association submitted comments supportive of the proposed rules. However, EPA submitted comments that were adverse to the proposal. EPA has stated that the rules as proposed would not be approvable as a change to the state implementation plan. EPA would like the department to prepare a worst case modeling analysis that shows protection of ambient standards through this proposal. The analysis would require worst-case assumptions about operating scenarios. EPA is insisting that these assumptions, such as short-term production limits, limited generator size, distance from property boundary and other limitations would then have to become requirements of the rule. With these restrictions, the department believes the rule would severely limit the use of the registration process. Since the only options apparent at this point are to adopt a rule that EPA will not approve or adopt a rule that will not be useful, the department proposes the Board to take no action on the proposed rule package.

Enclosures:

1. Notice of Public Hearing on Proposed Amendment and Adoption
2. Hearing Officer's Report
3. Draft Notice of Amendment and Adoption